



**Date of
Varied
Order:** February 8, 2024
Docket: LR23102
Type: Rental Appeal

INDEXED AS: Veronica Sohasky and Justin Maxwell v. Greg Arthur and Vicki Craig
Order No: LR23-78

BETWEEN:

Veronica Sohasky and Justin Maxwell

Appellants

AND:

Greg Arthur and Vicki Craig

Respondents

**VARIED ORDER LD23-78
(ORIGINALLY ISSUED DECEMBER 18, 2023)**

Panel Members:

Kerri Carpenter, Commissioner and
Panel Chair
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Corporate Services and Appeals

VARIATION TO ORDER LR23-78

1. In a decision issued December 18, 2023, (Order LR23-78, *Veronica Sohasky and Justin Maxwell v. Greg Arthur and Vicki Craig*), the Commission ordered the Landlords, Greg Arthur and Vicki Craig, to pay to the Tenants, Veronica Sohasky and Justin Maxwell, the security deposit, together with interest, in the amount of \$1822.32. Interest was calculated to the end of the Tenancy.
2. The *Residential Tenancy Act*, RSPEI 1988, Ch. R-13.11, provides that a landlord shall credit interest to the tenant on the full amount or value of the security deposit, at the rate prescribed by the regulations, during the time the security deposit is held by the landlord.
3. The past practice of the Commission to calculate and award interest to the date of the order issued by the Commission.
4. The calculation of interest in Order LR23-78 was an inadvertent error.
5. The Commission is authorized in its absolute discretion, to vary any order or decision made by it per section 12 of the *Island Regulatory and Appeals Commission Act*, RSPEI 1988, Ch. I-11.
6. Therefore, the Commission varies the following paragraphs of Order LR23-78 as underlined and struck through:

31. Accordingly, no rent is owed for July 2023 and the security deposit must be returned, in full, together with interest. Given that the rental agreement commenced September 1, 2022 and ended ~~June 30, 2023~~ and the security deposit was \$1800.00, the amount owed is ~~\$1822.32~~ \$1843.40, representing the addition of accrued interest of ~~\$22.32~~ \$43.40 from September 1, 2022, to December 18, 2023, which is the date of the issuance of this Order.

[...]

32. The appeal is allowed, Order LD23-459 is reversed, and the security deposit, together with interest in the amount of ~~\$1822.32~~ \$1843.40 must be returned to the Tenants forthwith.

7. The order section of Order LR23-78 will now read:

IT IS ORDERED THAT

1. **The appeal is allowed.**
2. **Order LD23-459 is reversed.**
3. **The rental agreement ended on June 30, 2023.**

4. The security deposit, together with interest, in the amount of \$1843.40 shall be paid to the Tenants forthwith.

8. The rest of Order LR23-78 remains unchanged and remains effective as of December 18, 2023.

VARIATION DATED at Charlottetown, Prince Edward Island, 8th day of February, 2024.

BY THE COMMISSION:

(sgd. Kerri Carpenter)
Kerri Carpenter, Commissioner and Panel
Chair

(sgd. Murray MacPherson)
Murray MacPherson, Commissioner



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ORDER

Panel Members:

Kerri Carpenter, Commissioner and
Panel Chair
Murray MacPherson, Commissioner

1. INTRODUCTION

1. At issue in this appeal, which was heard by the Commission on November 22, 2023, is whether the Residential Tenancy Office (the “Rental Office”) erred in determining the distribution of a tenant’s security deposit.

2. BACKGROUND

2. On July 12, 2022, Veronica Sohasky and Justin Maxwell (the “Tenants”) entered into a written fixed-term rental agreement for the premises located at 1 Bay Drive, Cornwell, PE (the “Premises”) with Greg Arthur and Vicki Craig (the “Landlords”) for the period September 1, 2022 to June 30, 2023. Rent for the Premises was \$1800 per month with a security deposit paid in the amount of \$1800.
3. The Tenants vacated the Premises on June 30, 2023. The Final inspection of the Premises was completed on July 2, 2023 at which time the Tenants turned over the keys to the Premises to the Landlords.
4. On July 14, 2023 the Landlords filed a Landlord Application (the “Landlords’ Application”) to Determine Dispute (Form 2B) with the Rental Office, requesting the retention of the security deposit to cover rent for July, claiming, *inter alia*, that Tenants did not provide 60 days written notice to end their tenancy on June 30.
5. The Landlords’ Application was heard by the Rental Office on September 26, 2023. In Order LD23-459, dated September 28, 2023, the Rental Office allowed the Landlords’ Application and ordered that the Landlords retain the security deposit in the amount of \$1,800 in payment of rent for July, 2023.
6. On October 18, 2023, the Tenants filed an appeal with the Commission.
7. On November 22, 2023 the Commission heard the appeal by way of telephone conference hearing. Both Tenants were present. The Tenant, Veronica Sohasky (“Ms. Sohasky”) gave evidence and called Catherine Leblond (“Ms. Leblond”) as a witness. The Landlord, Vicki Craig (“Ms. Craig”) was present, gave evidence and called Amy Lee (“Ms. Lee”) and Jadyen Black (“Ms. Black”) as witnesses. The Landlord Greg Arthur did not attend the hearing.

3. DISPOSITION

8. The appeal is allowed and Order LD23-459 is reversed. The full security deposit, together with interest, shall be returned to the Tenants.

4. ANALYSIS

9. The Commission must determine whether rent is owed for the month of July, 2023. The issue is essentially to determine the end date of the tenancy agreement.
10. The Lease itself provided an end date of June 30, 2023, however, as noted in the Director’s Order, sub-section 55(3) of the Act requires a Tenant to give notice in

accordance with the *Residential Tenancy Act* (the “Act”), at least one month prior to the end of a fixed term tenancy. Therefore, we must analyze the evidence of communications between the parties respecting the termination of the tenancy.

11. Based upon the evidence provided to the Commission, the form for Tenant Notice under the Act was not used by the Tenants; however, the Commission must consider whether the essential elements of such a Notice were provided at least at least one month before the June 30th end date specified in the lease.

January 2023 Communications

12. There was a brief exchange in January, 2023 wherein the Landlord noted that the property would be available after June 30 and the Tenants indicated some interest, but no agreement was struck. In this conversation, both Parties were clearly of the mind that the tenancy agreement was ending on June 30 and that only because the Landlord now indicated it was available would there be any consideration for the Tenants staying beyond that date. While the Act puts the end date in the hands of a tenant in many situations, the context of the discussions is important.

April 2023 Communications

13. The next relevant communications between the Parties was on April 13, 2023. In relation to these communications, in the Application by the Landlords to the Director, the Landlords claimed, in part, as follows:

On April 13th 2023 the tenants advised they were ending their tenancy July 31st 2023.

14. As will be shown below, the Application wording does not accurately represent the April 13th communications.
15. Ms. Sohasky’s evidence regarding the April 13, 2023 communications is as follows. On April 13, 2023 she informed Ms. Craig by text message that they would be moving elsewhere but asked if it would be possible to extend the lease by one month, to the end of July. Ms. Sohasky says that the Landlord did not confirm agreement to the one-month extension. Ms. Sohasky testified that the Tenants interpreted the discussion to mean that Ms. Craig needed to confirm with the other landlord whether a one-month extension would be possible. Ms. Sohasky denies that Ms. Craig confirmed the extension orally at any point thereafter and stated that since it was never confirmed, their initial text message on April 13 is the notice that the lease would not be renewed beyond June 30. Ms. Craig says she confirmed the extension to July 31 verbally to Ms. Sohasky outside on a “sunny day in April”.
16. The Documentary evidence submitted to the Commission in regards to the April 13 communications is as follows. At page 57 of the Commission file materials, being part of Exhibit E-10, there is a copy of a text message exchange, which provides as follows:

“Ms. Sohasky: Also, Justin and I wanted to let you know what we are thinking in terms of our lease. We are looking for a place to rent with a couple of other vet students I’m friends with that would be closer to campus. We have had a great time living here ☺ Since their lease isn’t up until the end of July, is it possible we may be able to extend our lease another month until the end of July?”

Vicki: Hi that sounds exciting and I am so glad you have enjoyed living here!!! At this point I am fairly certain that end of July would work fine but I will double check with Greg. It has been delightful having you at the house

23. The undisputed evidence is that the Landlords took the keys and regained possession of the premises on July 2nd at the completion of the inspection. There was no evidence of any mention by Ms. Craig that she required payment of rent for July, bearing in mind that the walk through took place the day after the rent would have been due, if in fact the lease was still in effect. There is also no evidence of the Landlord making any efforts to leave the possession of the premises to the Tenants or delay doing the final inspection until the alleged July 31 end date.
24. Thereafter and continuing until July 7th, there was an exchange of emails discussing the security deposit return. Ms. Craig wanted paperwork signed. She eventually clarified that the paperwork was a “mutual release” which the Tenants did not want to sign. Ms. Craig only communicated that she would not return the security deposit after the Tenants said they would not sign a release because same was not required under the *Act*. This suggests that the security deposit was withheld due to the Tenants refusing to sign a release, and not due to rent being owed for July, especially considering that the Landlord had retaken possession of the Premises and the Tenants no longer had access to it.
25. Ms. Leblond confirmed the events that took place at the final walk-through. She testified that Ms. Craig stated that she would return the security deposit and she was too busy that day for paperwork. Ms. Leblond stated that Ms. Craig did not mention anything about a mutual release during the walk-through.
26. Ms. Lee testified that she was a past tenant at the Premises for two years. She testified that she is not related to the Landlords and did not know them before 2020.
27. Ms. Black testified that she is the current tenant at the Premises. She had a quick interaction with Ms. Sohasky when she had viewed the Premises. Ms. Black stated that Ms. Sohasky indicated that she was moving out at the end of July. Ms. Black stated that she moved into the Premises on August 1, 2023.
28. Ms. Craig testified that she found a new tenant (Ms. Black) for August 1 and this indicates that the lease with the Tenants did not end until July 31. While the Commission gives consideration to this evidence, it is not sufficiently compelling in view of the totality of the evidence supporting the finding of a June 30 end date. There may be other reasons for having a gap between tenants.
29. In conclusion, the Commission finds that all conduct of the Landlord up to that point was indicative of the Landlord having accepted June 30th as the end date of the tenancy arrangement. The Commission hesitates to order that rent is owing for July when the Landlord actively participated in the final inspection on July 2nd (having attempted to schedule it for noon on June 30th), and considering the landlord took possession of the Premises on July 2nd, indicated the security deposit would be returned, and made no mention of rent having been due for July the day prior to the inspection being conducted.
30. On the whole of the evidence, the Commission finds that the April 13th text message adequately communicated the required information to terminate the tenancy arrangement

effective June 30. Furthermore, the Landlord's conduct amounts to accepting an end date of June 30 even if the Tenants' April 13th communications had been insufficient. The Tenancy agreement ended on June 30.

31. Accordingly, no rent is owed for July 2023 and the security deposit must be returned, in full, together with interest. Given that the rental agreement commenced September 1, 2022 and ended June 30, 2023 and the security deposit was \$1800.00, the amount owed is \$1822.32, representing the addition of accrued interest of \$22.32.

5. CONCLUSION

32. The appeal is allowed, Order LD23-459 is reversed, and the security deposit, together with interest in the amount of \$1822.32 must be returned to the Tenants forthwith.

IT IS ORDERED THAT

5. **The appeal is allowed.**
6. **Order LD23-459 is reversed.**
7. **The rental agreement ended on June 30, 2023.**
8. **The security deposit, together with interest, in the amount of \$1822.32 shall be paid to the Tenants forthwith.**

DATED at Charlottetown, Prince Edward Island, Monday, December 18, 2023.

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner and Panel
Chair

(sgd. Murray MacPherson)

Murray MacPherson, Commissioner

NOTICE

Subsections 89 (9), (10) and (11) of the *Residential Tenancy Act* provides as follows:

89. (9) A landlord or tenant may, within 15 days of the decision of the Commission, appeal to the Court of Appeal in accordance with the *Island Regulatory and*

Appeals Commission Act R.S.P.E.I. 1988, Cap. I-11,
on a question of law only.

(10) Where the Commission has confirmed, reversed or varied an order of the Director, the landlord or tenant may file the order with the Supreme Court.

(11) Where an order is filed under subsection (10), it may be enforced as if it were an order of the Supreme Court.